

AMENDMENT NO. 5  
TO  
AMENDED AND RESTATED  
COMMUNITY DEVELOPMENT PLAN  
OF THE  
OJO DE AGUA PROJECT

This Amendment No. 5 amends the Community Development Plan of the Ojo De Agua Project which was originally adopted in 1981 and was last amended and restated by Amendment No. 4 enacted on even date herewith (the "Amended and Restated Plan").

Section 403 of the Amended and Restated Plan shall be revised in its entirety as follows:

1. (Sec. 403) Acquisition of Real Property

The Agency may purchase, lease, obtain option upon or otherwise acquire any interest in real property by gift, devise, exchange, purchase, or any other means authorized by law.

It is in the public interest and is necessary in order to eliminate the conditions requiring redevelopment and in order to implement this Plan for the power of eminent domain to be employed by the Agency to acquire real property which cannot be acquired by gift, devise, exchange, purchase or any other lawful method.

The use of eminent domain by the Agency shall be limited by this Amendment as follows:

- The Agency may only exercise its authority for eminent domain in conformance with the United States Constitution and the Constitution of the State of California.
- The Agency may only exercise its authority for eminent domain on real property after exhausting all good faith efforts to acquire the property through negotiation, which negotiation shall recognize the property owner's right to fair compensation as provided in the Constitution, and shall recognize the public's interest in acquiring property at no more than its fair market value.
- The Agency may only exercise its authority for eminent domain on real property located within the area shown on Attachment E, "Eminent Domain Inclusion Area."
- Eminent domain proceedings, if used, must be commenced prior to \*\*\*\*\* \*\*, 2018.
- The eminent domain authority conferred by this provision may not be used to acquire any property which has been legally developed and occupied for residential purposes.
- Prior to the initiation of any legally mandated process to acquire a property by eminent domain pursuant to this provision, the Agency Board shall adopt guidelines detailing the scope and nature of its proposed use consistent with the authority granted herein.

- Any project undertaken by the Redevelopment Agency that requires the use of eminent domain must conform to the goals of the adopted Downtown Plan, if in the downtown area bordered by Del Monte Ave, Butterfield Blvd., Dunne Ave., and Main St., as identified in the "Eminent Domain Inclusion Area."

Without the consent of the owner, the Agency shall not acquire real property to be retained by an owner pursuant to a participation agreement if the owner fully performs under the agreement unless provision for such acquisition is made in the agreement. The Agency is authorized to acquire structures without acquiring the land upon which those structures are located. The Agency is also authorized to acquire any other interest in real property less than a fee interest.

If required by law, the Agency shall not acquire real property on which an existing building is to be continued on its present site and in its present form and use without the consent of the owner, unless (1) such building requires structural alterations, improvement, modernization, or rehabilitation, or (2) the site or lot on which the building is situated requires modification in size, shape, or use, or (3) it is necessary to impose upon such property any of the standards, restrictions and controls of the Amendment and the owner fails or refuses to participate in the Amendment by executing a participation agreement.

Except as set forth in this Amendment No. 5, the Amended and Restated Plan dated \_\_\_\_\_ shall remain unmodified and in full force and effect.

This Amendment No. 5 is effective as of \_\_\_\_\_.

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ATTACHMENT E

EMINENT DOMAIN INCLUSION AREA

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